

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

Declaration of Alon Leibovich

I, Alon Leibovich, state and declare under penalty of perjury as follows:

1. I am the CEO and co-founder of Defendant-Counterclaim Plaintiff BrandTotal Ltd. Defendant-Counterclaim Plaintiff Unimania, Inc., is a wholly-owned subsidiary of BrandTotal that designs apps that work in connection with BrandTotal's business. Collectively, I refer to both entities herein as "BrandTotal."

2. I submit this declaration in support of BrandTotal's Motion for Temporary Restraining Order. I am over the age of eighteen and I have personal knowledge of the facts set forth below. If called as a witness, I could and would testify competently to these facts and statements.

3. BrandTotal seeks emergency relief due to the actions of Facebook, Inc. ("Facebook") which, unless enjoined and restored to the status quo will result in the imminent demise of BrandTotal's business.

4. Without relief, BrandTotal is unable to carry on its business as it cannot access the information it needs to provide valuable competitive analysis to its customers, it cannot maintain current customers or secure new customers, it cannot maintain vendor relationships, it cannot generate revenue, and ultimately, unless redressed, all or most of its employees will lose their jobs.

5. As a result, a thriving company will be destroyed, and the market will have lost valuable service provider resulting in less competition.

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**BrandTotal's Business Compensates Panelists Who Consent
to Share Their Own Experiences with Advertising on Social Media.**

6. Together with co-founders Amir Leshman, Omer Ramote and Oren Dor, I formed BrandTotal almost four years ago, to be a premier advertising consulting company offering competitive analyses of advertising efforts on social media sites like Facebook, Instagram, Twitter, YouTube, LinkedIn, Amazon and others.

7. As explained on our website, <https://www.brandtotal.com/>, “before digital it was pretty straightforward to track the competition in print, on billboards and on TV. But today, with 90% of today's digital marketing hidden from view and fragmented across multiple channels, it can be challenging to understand how your brand marketing measures up to the competition.”

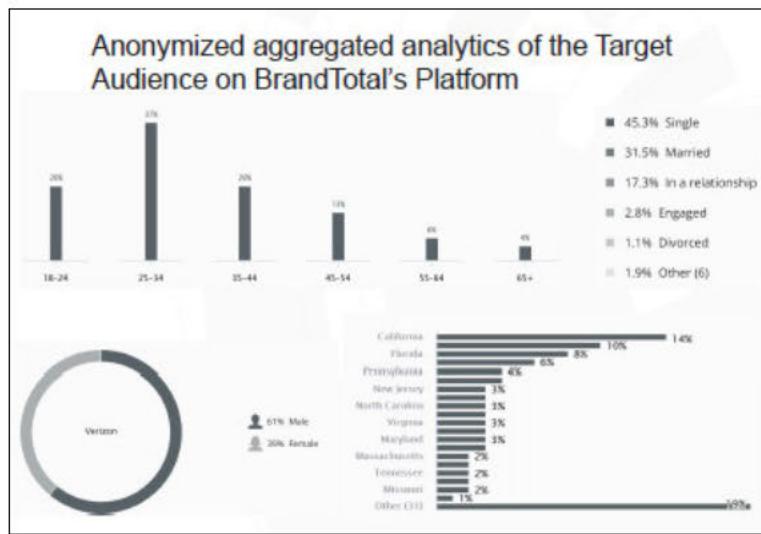
8. Fortune 500 companies and others want analytical intelligence not only about how their own advertising is received on social media sites, but also how competitors' ads are viewed and perceived.

9. In order to provide this valuable intelligence, we conceived of an offering whereby panelists consent to share their social media experience in exchange for cash gift cards or other incentives. This is fairly unique in that we compensate panelists for the information that others seek to use for free.

10. In our most popular offering, willing panelists download a browser extension called UpVoice that allows us to collect information about the participant's advertising interactions. With the participant's consent and after they deliberately install the app in exchange for compensation, we are able to collect information about the ads they see and interact with on social media sites like Facebook, as they browse as usual on those sites.

11. Our customers, companies that advertise on social media and whose competitors advertise on social media, seek generalized information about the ads panelists see. They want to know which demographics are seeing which ads and at what times.

12. We provide anonymized aggregated analytics for our customers. For example, using Facebook's user demographics, and with panelists' consent, we provide summary information about the demographics of viewership of certain ads appearing on social media of the type shown below:



13. Significantly, we do not keep or compile panelists' private postings, passwords, photos, or web history, nor do we mine "friend" information, or otherwise take data not authorized by the panelist. Rather, we anonymize and aggregate the data by demographic info (age, gender, high level location, marital status, interests). Users cannot be identified, and no one can trace back information about specific users.

14. Our system operates with consent and is value-added for both panelists who receive compensation for their browsing, and customers wanting aggregate information about advertising.

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15. To the best of my understanding, we are compliant with data privacy laws, including the General Data Protection Regulation (“GDPR”) in Europe and the California Consumer Privacy Act (“CCPA”).

16. In many ways, what we do is similar to what the Nielsen TV surveys did in the past. Whereas in the past, information would be collected about which demographics were watching which TV shows (so advertisers could better target audiences), today we compile information about the ads various demographics see as they scroll and browse social media.

17. In the modern era, the only way to gather similar intelligence, as a practical matter, is to utilize apps that are compatible with the major social media sites, like Facebook. Manual collection would be unworkable and impractical (the volume is simply too large), especially in view of the modest compensation available to users in a viable business model. And while BrandTotal compiles advertising analytics from more sites than just Facebook, Facebook’s size and breadth means that it occupies a primary position in the social media space. And in any event Facebook’s actions have cut BrandTotal off from other sites as well.

18. There is no current or viable alternative to access to Facebook, and without it, BrandTotal’s business cannot survive.

Facebook’s Actions Have Disrupted BrandTotal’s Access to Information Making It Impossible for BrandTotal to Provide the Advertising Analytics That is the Core of its Business.

19. Approximately two weeks ago, without warning or communication, Facebook suspended BrandTotal’s Facebook and Instagram pages, as well as the personal pages of BrandTotal’s principals.

20. BrandTotal had openly and publicly advertised its services on Facebook since approximately August 2018 and Facebook never raised any concerns.

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21. Facebook also did not inform BrandTotal of any alleged wrongdoing until it filed the Complaint in California State Court. Indeed, on October 1, 2020 BrandTotal learned of the state court lawsuit from a news article, and promptly started receiving inquiries of alleged wrongdoing that we knew nothing about.

22. Additionally, as BrandTotal would learn from Facebook's state court complaint, Facebook sent take down notices to Google to remove applications that work with BrandTotal's business.

23. This included not only UpVoice, but also Unimania's Ads Feed, a program that also operates with user consent, but is a less popular part of BrandTotal's offering and we are not currently asking for anything besides UpVoice to be reinstated at this time.

24. On approximately October 2 BrandTotal learned that Google removed these and other BrandTotal-related applications from the Google Chrome store.

25. Collectively these actions have resulted in BrandTotal losing access to almost all of its data stream necessary for it to compile advertising analytics for its customers.

26. Moreover, BrandTotal's current panelists cannot login to collect any rewards they have earned, and BrandTotal cannot recruit new panelists.

27. Already, UpVoice panelists have voiced objection to Facebook's unilateral actions to stop panelists from monetizing their own information and experiences.

28. Attached as Exhibit A is a true and correct copy of email comments of several panelists reacting to Facebook's actions. For example, one UpVoice participant states, "it's a browser extension that you have to OPT IN to . . ."

29. Facebook contends in the Complaint that BrandTotal's identification of Facebook as a "participating site" is improper, but Facebook never brought this issue to our attention

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before filing the State Court action. Had Facebook approached us, we would have removed that verbiage, and have since removed it. We also will not use the verbiage in any new advertisements for UpVoice to the extent we are able to get UpVoice back up and running.

Facebook's Actions Are Driving Away Existing and Prospective Customers

30. Facebook's actions are also impacting our ability to provide analytics to existing customers, i.e., companies wanting advertising analytics from social media.

31. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. [REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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36.

41

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43. [REDACTED]

[REDACTED]

[REDACTED]

Facebook's Actions are Resulting in Reputational Harm

44. Further, Facebook's actions and allegations are causing what may soon be irreversible reputational harm to BrandTotal.

45. To the best of my understanding, BrandTotal complies with all applicable data and privacy laws and prides itself on being transparent with our panelists.

46. The business model is successful because panelists are able to receive value for their own advertising interactions, and companies are able to receive high level analytical information about competitive advertising.

47. Yet, Facebook has cast BrandTotal as a “malicious” actor, implying that BrandTotal is somehow duping panelists to collect sensitive personal information without consent.

48. For example, an article in Tech Crunch appearing on October 1 stated in the first line, “Facebook today says it has filed a lawsuit in the U.S. against two companies that had engaged in an **international ‘data scraping’ operation.**” (emphasis added). A true and correct copy of this article is attached as Exhibit E.

49. This label “international data scraping operation” is reputationally harmful, and implies nefarious conduct. It is an insinuation that we are like Cambridge Analytica. “Data scrapers” collect as much information as they can through any means possible using automated tools, like bots and scripts. Cambridge Analytica infamously scraped millions of Facebook profiles in the run-up to the 2016 presidential election in order to target undecided voters.

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50. BrandTotal does not engage in this sort of conduct. BrandTotal's panelists are informed and compensated.

51. The misleading portrayals of BrandTotal have the potential to destroy BrandTotal's reputation such that fortune 500 companies and others will refuse to do business with BrandTotal now and for the foreseeable future.

Facebook's Actions are Preventing Fundraising and New Capital Contributions

52. In addition to monthly revenue, BrandTotal relies on private fundraising and venture capital to support and grow its business.

53. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

55. [REDACTED]

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The Loss of Revenue and Other Impacts Will Result in Financial Collapse and Job Loss in a Short Time Period

57. As indicated above, BrandTotal relies on monthly revenues and fundraising to finance operations.

58. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

61.

[REDACTED]

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65. Allowing BrandTotal to continue to operate does no harm to Facebook as BrandTotal is not improperly “scraping” private data and it respects user privacy. Moreover, BrandTotal’s business and related apps, including UpVoice, does not impair the proper working or appearance of Facebook.

* * *

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 16th day of October 2020.

Alon Leibovich

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Exhibit A

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Reddit

↑ xoemily 3 points · 2 days ago

↓ Hoping they sort it out, and manage to get back up and running. I know a lot of people were right at the edge of cashing out.

(Assuming that they legally *are* in the clear like they claim they are.)

↑ zarraza2k 3 points · 2 days ago

↓ i don't know why they wound't be - it's a browser extension that you have to OPT IN to - i think it's just a matter of greed from google and/or facebook or whomever - they don't want to share that data with anyone- which makes me wish there were an alternative to FB

[Continue this thread →](#)

↑ ImInTheUpsideDown 6 points · 5 days ago

↓ That sucks, I really liked that extension :(

↑ ffmast 6 points · 5 days ago

↓ This sucks. I could care less if they were scraping my data. At least I was actually getting paid for it. I'd gladly give my data for some money that other sites always sell for their own profit. I was 90 tokens away from my next \$10 too.

↑ Cobra11Murderer 3 points · 5 days ago

↓ I actually made 70 off them after a year.. cashed out last month no issues.. I'll missem

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↑ particlegun 1 point · 6 days ago
↓ Sad news, it was an alright little earner.

Email

UpVoice Issue  Inbox 



[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>
to contact@joinupvoice.com ▾

Hey guys, earlier this evening Chrome auto disabled my extension, and won't allow it to be turned back on advising it "contains malware" is this the death of UpVoice? Say it isn't so!

- [REDACTED]

I tried finding it on the chrome web store again and it was gone hopefully its nothing wrong on my end but hopefully my upvoice will work again i loves this extension alot and thank you so much upvoice for your help

' I will continue to use your extension if you get it up and running again. Thanks and I hope that you have a good day.

How can I continue to use your service??

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First Name: [REDACTED]

Last Name: [REDACTED]

Email: [REDACTED]@gmail.COM

message: The new Microsoft Edge has removed Upvoice from some of my platforms I personally have never had any problems with Upvoice thank you for the opportunity to earn during these unpredictable times

Get updated - Checkbox: true

First Name: [REDACTED]

Last Name: [REDACTED]

Email: [REDACTED]@yahoo.com

message: Hi! Whats going on with the extension since its gone? Will we still be able to utilize the service some how? I really enjoyed it.

Re: Important Updates From UpVoice □ Inbox X



[REDACTED] <[REDACTED]5737@gmail.com>

to UpVoice ▾

I trust you all the way and I hope you guys win.

Re: Important Updates From UpVoice □ Inbox X



[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>

to UpVoice ▾

I had UpVoice on my browser UNTIL I GOT A WARNING THAT SAID IT HAD A POTENTIAL VIRUSSO I RECENTLY REMOVED AND I RECEIVED THIS LETTER THIS MORNING. As usual Facebook wanted their hands involved.
HOPEFULLY YOUR TEAM WILL GET THIS RUNNING AGAIN!!!



[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>

to UpVoice ▾

Thank you for reaching out. I want you to know I was extremely upset when my browser removed UpVoice without my permission. I totally intend to reinstall UpVoice when I get my new computer. Thank you!

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to UpVoice ▾

I believe in you and hope you win this,it was one of the things I looked forward to everyday was going to the sites that earned me the extra money that helped me out.



to UpVoice ▾

I still have it in my extension stuff. I didnt delete it. Im glad ur still here. Cant wait to get back doing it.



[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>

to contact@joinupvoice.com ▾

thank you for the update,hopefully you get this matter taken care of soon.i enjoy taking surveys
and voicing my opinions



to contact ▾

Mon, Oct 5, 8:47 PM (3 days ago)

☆ ↶ :

Hello, In regards to the recent event that facebook has blocked your app, i want you to know that i am VERY interested in continuing to do business with you! I support your efforts and will patiently wait until thier grievence is satisfied and will be more than happy to continue to use your services on ANY platform you choose! Thank you for the opportunities and services that you provide, I highly recommend your services and want you to know that you have my full support!

In waiting,



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[REDACTED] via contact@joinupvoice.com <conta... Mon, Oct 5, 9:01 PM (3 days ago)

to contact@joinupvoice.com ▾

Tbh, I feel like it's completely bullshit that facebook is suing you guys for "scraping data." To be fair, websites, ISPs and servers take our data and sell it off for a profit while we get nothing back in return. At least upvoice gives us a little money for our data. I'm perfectly fine with my data being collected if I get a little side benefit from it beyond just an advert for a product I most likely wouldn't buy anyways. I was 9 days away from being able to redeem \$10 and I do hope upvoice walks away from this lawsuit issue just fine. All I have to say is screw facebook, they make billions off our data and have been subject to leaks in the past where we got nothing in return. You guys have my support 100%. Lets hope for a bright future.

[REDACTED] via contact@joinupvoice.com <conta... Mon, Oct 5, 11:32 PM (3 days ago)

to contact@joinupvoice.com ▾

I just wanted to reach out and say thank you for the email explaining what is going on, and that I hope you come out of all this on top. I wanted to say thank you, because so many other companies don't bother. I was part of something called ChiliTV this past year and last. Suddenly they disappeared, owing myself and countless others money, without a word of what is happening. To this day, all we can assume is they are out of business, and we will never see the money owed to us. It shows a lot when a company can reach out and let the people involved know what is happening, so thank you for that.

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[REDACTED] <[REDACTED]@gmail.com>
to UpVoice ▾

Mon, Oct 5, 11:52 PM (3 days ago)



Hi yes that is why I asked for my redemption because I wasn't sure what was going on I heard that FB was SUING you and even my own computer is telling me that if I have you, then it will cause VIRUSES for please let me know when I can come back when you have this issue resolved because I have really ENJOYED your company be blessed and Shalom
[REDACTED]

[REDACTED]
to UpVoice ▾

Oct 6, 2020, 1:49 AM (2 days ago)



It just seemed too, too ridiculous to me... and then I began thinking about Facebook. Why was THAT? Facebook's been playing dirty with more and more companies, small businesses, individuals, and yet I found no way to contact any of you to butt in, because it just felt wrong.

HANG TIGHT, people. I'm sorry as hell you have to go through this kind of crap, I really am. You've always been very nice to ME, 'though you may not even realize that, so I'm staying loyal. In fact, I wanted SO much to do one of those amateur videos for you, but I had no one to help me out doing that, and it was at a time when I was not in the best of moods (a certain orange being can easily do that to me, more often than not) -- and I'd wanted to be "natural, but funny" about it, dammit. So sorry.

[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>
to UpVoice ▾

Tue, Oct 6, 4:33 AM (2 days ago)



Yes I've been having issues but as far as I'm concerned you are upstanding and shame on Facebook once again. I hope you are up and running soon. Thanks for all you do.
[REDACTED]

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[REDACTED]@gmail.com>

to UpVoice ▾

Hi hope it works out really enjoy your app .. 😊 .. [REDACTED]

[REDACTED]
to UpVoice ▾

Wed, Oct 7, 5:45 PM (22 hours ago)



Hi my upvoice extention says tech issues and malware is found out of nowhere!!

I missed like a week's worth of points or more and now I'm owed a \$10 Gift card, Please advise and email me my \$10 amazon gift card thank you!

I LOVE UPVOICE AND SO SORRY THIS HAS HAPPENED! I HOPE IT GETS FIXED

THANKS GOD BLESS! 😊

[REDACTED] via contact@joinupvoice.com <contact@joinupvoice.com>

to UpVoice ▾

Thank you. I hope everything works out well.

First Name: [REDACTED]

Last Name: [REDACTED]

Email: [REDACTED]@gmail.com

message: Hi my upvoice extention says tech issues and malware is found out of nowhere!! I missed like a weeks worth of points or more and now I'm owed a \$10 Gift card, Please advise and email me my \$10 amazon gift card thank you! I LOVE UPVOICE AND SO SORRY THIS HAS HAPPENED! I HOPE IT GETS FIXEDTHANKS GOD BLESS!

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Exhibit B

Filed Under Seal

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Exhibit C

Filed Under Seal

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Exhibit D

Filed Under Seal

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Exhibit E

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Facebook sues two companies engaged in data scraping operations



[Facebook](#) today says [it has filed a lawsuit](#) in the U.S. against two companies that had engaged in an international “data scraping” operation. The operation extended across Facebook properties, including both [Facebook](#) and Instagram, as well as other large websites and services, including Twitter, Amazon, LinkedIn and YouTube. The companies, which gathered the data of Facebook users for “marketing intelligence” purposes, did so in violation of Facebook’s Terms of Service, says Facebook.

The businesses named in the lawsuit are Israeli-based BrandTotal Ltd. and Unimania Inc., a business incorporated in Delaware.

According to [BrandTotal's](#) website, its company offers a real-time competitive intelligence platform that’s designed to give media, insights and analytics teams visibility into their competition’s social media strategy and paid campaigns. These insights would allow its customers to analyze and shift their budget allocation to target new opportunities, monitor trends and threats from emerging brands, optimize their ads and messaging and more.

Meanwhile, Unimania operated apps claimed to offer users the ability to access social networks in different ways. For example, Unimania offered apps that let you view Facebook via a mobile-web interface or alongside other social networks like Twitter. Another app let you view [Instagram](#) Stories anonymously, it claimed.

However, Facebook’s lawsuit is largely focused on two browser extensions offered by the companies: Unimania’s [“Ads Feed”](#) and BrandTotal’s [“UpVoice.”](#)

The former allowed users to save the ads they saw on Facebook for later reference. But as the extension’s page discloses, doing so would opt users into a panel that informed the advertising decisions of Unimania’s corporate customers. UpVote, on the other hand, rewarded users with gift cards for using top social networking and shopping sites and sharing their opinions about the online campaigns run by big brands.

Facebook says these extensions operated in violation of its protections against scraping and its terms of service. When users installed the extensions and visited Facebook websites, the extensions installed automated programs to scrape their name, user ID, gender, date of birth, relationship status, location information and other information related to their accounts. The data was then sent to a server shared by BrandTotal and Unimania.

[Facebook lawsuit vs BrandTotal Ltd. and Unimania Inc.](#) by [TechCrunch](#) on Scribd

Data scrapers exist in part to collect as much information as they can through any means possible using automated tools, like bots and scripts. [Cambridge Analytica](#) infamously [scraped millions of Facebook profiles](#) in the run-up to the 2016 presidential

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election in order to target undecided voters. Other data scraping operations use bots to monitor concert or event ticket prices in order to undercut competitors. Scrapped data can also be used for marketing and advertising, or simply sold on to others.

In the wake of the Cambridge Analytica scandal, Facebook has begun to pursue legal action against various developers that break its terms of service.

Most cases involving data scraping are litigated under the Computer Fraud and Abuse Act, written in the 1980s to prosecute computer hacking cases. Anyone who [accesses a computer “without authorization”](#) can face hefty fines or even prison time.

But because the law doesn't specifically define what “authorized” access is and what isn't, tech giants have seen mixed results in their efforts to shut down data scrapers.

[LinkedIn lost](#) its high-profile case against HiQ Labs in 2019 after an appeals court ruled that the scraper was only collecting data that was publicly available from the internet. Internet rights groups like the Electronic Frontier Foundation [lauded the decision](#), arguing that internet users should not face legal threats “simply for accessing publicly available information in a way that publishers object to.”

Facebook's latest legal case is slightly different because the company is accusing BrandTotal of scraping Facebook profile data that wasn't inherently public. Facebook says the accused data scraper used a browser extension installed on users' computers to gain access to their Facebook profile data.

In March 2019, it took action against two Ukrainian developers who were harvesting data using quiz apps and browser extensions to scrape profile information and people's friends lists, Facebook says. A court in California recently [recommended](#) a judgement in Facebook's favor in the case. A separate [case](#) around scraping filed last year against a marketing partner, Stackla, also came back in Facebook's favor.

This year, Facebook [filed lawsuits](#) against [companies](#) and individuals engaged in both scraping and fake engagement services.

Facebook isn't just cracking down on data scraping businesses to protect user privacy, however. It's because failing to do so can lead to large fines. Facebook at the beginning of this year was [ordered](#) to pay out over half a billion dollars to settle a class action lawsuit that alleged systemic violation of an Illinois privacy law. Last year, it [settled with the FTC over privacy lapses](#) and had to pay a \$5 billion penalty. As governments work to further regulation of online privacy and data violations, fines like this could add up.

The company says legal action isn't the only way it's working to stop data scraping. It has also invested in technical teams and tools to monitor and detect suspicious activity and the use of unauthorized automation for scraping, it says.